

Darriel E. Rogers,)
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 Plaintiff,)
)
 v.) Civil Action No. 1:17-1430-BHH
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)
 Nancy A. Berryhill, Acting)
 Commissioner of Social Security,)
)
)
 Defendant.)
)

Attorney's fees may be awarded pursuant to EAJA where the government's position is not substantially justified. The substantial justification test is one of reasonableness in law and fact. See *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The district court has broad discretion to set the attorney fee amount. "[A] district court will always retain substantial discretion in fixing the amount of an EAJA award. Exorbitant, unfounded, or procedurally defective fee applications . . . are matters that the district court can recognize." *Hyatt v. North Carolina Dep't of Human Res.*, 315 F.3d 239, 254 (4th Cir. 2002) (citing *Comm'r v. Jean*, 496 U.S. 154, 163 (1990)). Moreover, the court should not only consider the "position taken by the United States in the civil action," but also the "action or failure to act by the agency upon which the civil action is based." 28 U.S.C. § 2412(d)(2)(D), as

amended by P.L. 99-80, § 2(c)(2)(B).

After consideration, it is hereby

ORDERED that Plaintiff's motion (ECF No. 22) is granted, and Plaintiff is awarded \$3,206.76 pursuant to EAJA.¹

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

May 8, 2018
Charleston, South Carolina

¹ As the Supreme Court made clear in *Astrue v. Ratliff*, attorney's fees under EAJA are made payable to the prevailing litigant and not to the litigant's attorney. 560 U.S. 586, 598 (2010) (holding that the plain text of EAJA requires that attorney's fees be awarded to the litigant, thus subjecting EAJA fees to an offset of any pre-existing federal debts).